

CRIMINAL OFFENSE PENALTIES**AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies provisions of the Criminal Code regarding elements of specified criminal offenses and regarding the dollar value of damage used to determine levels of criminal offenses.

Highlighted Provisions:

This bill:

- ▶ applies the enhanced penalty that currently applies to persons committing a crime in concert with two or more persons to persons who commit any of the listed offenses in association with a criminal street gang;
- ▶ provides that commission of aggravated assault resulting in serious bodily injury is a second degree felony, regardless of whether the actor intended to cause serious bodily injury;
- ▶ modifies the penalty for a second offense of theft, or of robbery or burglary with the intent to commit theft, to require that the second offense be committed or the conviction obtained within ten years prior to the current theft offense;
- ▶ modifies the factors considered by the juvenile court in hearings to certify a juvenile to stand trial as an adult to include if the juvenile engaged in criminal activity in association with a criminal street gang;
- ▶ modifies the definition of a criminal nuisance to include criminal activity conducted in association with a criminal street gang; and
- ▶ modifies the dollar value of damage that determines the levels of offense for offenses, including arson, criminal mischief, theft, various fraud offenses, unlawful dealing by a fiduciary, destruction of livestock, reckless burning, computer crimes, bad checks, mortgage fraud, and theft of utility services.

Monies Appropriated in this Bill:

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **9-4-612**, as last amended by Laws of Utah 2007, Chapter 322

38 **63M-7-510**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
39 amended by Laws of Utah 2008, Chapter 382

40 **76-3-203.1**, as last amended by Laws of Utah 2009, Chapter 157

41 **76-5-103**, as last amended by Laws of Utah 1995, Chapter 291

42 **76-6-101**, as last amended by Laws of Utah 2009, Chapter 320

43 **76-6-102**, as last amended by Laws of Utah 2004, Chapter 134

44 **76-6-104**, as last amended by Laws of Utah 1998, Chapter 71

45 **76-6-106**, as last amended by Laws of Utah 2002, Chapter 166

46 **76-6-111**, as enacted by Laws of Utah 2009, Chapter 282

47 **76-6-409.3**, as last amended by Laws of Utah 1995, Chapter 291

48 **76-6-412**, as last amended by Laws of Utah 1997, Chapters 119 and 289

49 **76-6-505**, as last amended by Laws of Utah 2007, Chapter 306

50 **76-6-506.5**, as last amended by Laws of Utah 2009, Chapter 166

51 **76-6-513**, as last amended by Laws of Utah 2008, Chapter 382

52 **76-6-518**, as last amended by Laws of Utah 1995, Chapter 291

53 **76-6-608**, as last amended by Laws of Utah 2003, Chapter 173

54 **76-6-703**, as last amended by Laws of Utah 2005, Chapter 72

55 **76-6-1204**, as last amended by Laws of Utah 2009, Chapter 211

56 **76-8-1206**, as last amended by Laws of Utah 1995, Chapter 291

57 **76-8-1301**, as last amended by Laws of Utah 2008, Chapter 305

58 **76-10-1801**, as last amended by Laws of Utah 2009, Chapter 211

59 **78A-6-703**, as renumbered and amended by Laws of Utah 2008, Chapter 3

60 **78B-6-1101**, as last amended by Laws of Utah 2009, Chapter 21

61 **78B-6-1107**, as renumbered and amended by Laws of Utah 2008, Chapter 3

62

63 *Be it enacted by the Legislature of the state of Utah:*

64 Section 1. Section **9-4-612** is amended to read:

65 **9-4-612. Penalties for fraudulently obtaining or continuing to receive housing**
66 **assistance benefits.**

67 (1) No person may knowingly, by misrepresentation, impersonation, or any other
68 fraudulent means, make any false statement to housing authority personnel or, after being
69 accepted as a recipient of housing authority benefits, fail to disclose to housing authority
70 personnel any:

71 (a) change in household composition;

72 (b) employment change;

73 (c) change in marital status;

74 (d) receipt of any other monetary assistance;

75 (e) receipt of in-kind gifts; or

76 (f) any other material fact or change in circumstances which would affect the
77 determination of that person's eligibility to receive housing assistance benefits, or would affect
78 the amount of benefits for which he is eligible.

79 (2) No person may fail to disclose any of the information described in Subsection (1)
80 for the purpose of obtaining or continuing to receive funds or other housing assistance benefits
81 to which he is not entitled, or in an amount larger than that to which he is entitled.

82 (3) No person who has duties relating to the administration of any housing authority
83 program may fraudulently misappropriate any funds or other assistance with which he has been
84 entrusted, or of which he has gained possession by virtue of his position.

85 (4) No person may knowingly:

86 (a) file or falsify any claim, report, or document required by state or federal law, or
87 provider agreement, to obtain or attempt to obtain unauthorized housing assistance benefits
88 under this chapter; or

89 (b) attempt to commit, or aid or abet the commission of, any act prohibited by this
90 section.

91 (5) The punishment for violation of any provision of this section by a housing
92 assistance recipient is determined by the cumulative value of the funds or other benefits he
93 received from all the frauds he committed, and not by each separate instance of fraud.

(6) The punishment for the offenses of this section are:

(a) a ~~[felony of the]~~ second degree felony if the value of the funds or other benefits received, misappropriated, claimed, or applied for, is equal to or exceeds \$5,000;

(b) a ~~[felony of the]~~ third degree felony if the value of the funds or other benefits received, misappropriated, claimed, or applied for, is equal to or greater than ~~[\$1,000]~~ \$1,500 but less than \$5,000;

(c) a class A misdemeanor if the value of the funds or other benefits received, misappropriated, claimed, or applied for, is equal to or greater than ~~[\$300]~~ \$500 but less than ~~[\$1,000]~~ \$1,500; or

(d) a class B misdemeanor if the value of the funds or other benefits received, misappropriated, claimed, or applied for, is less than ~~[\$300]~~ \$500.

Section 2. Section **63M-7-510** is amended to read:

63M-7-510. Ineligible persons -- Fraudulent claims -- Penalties.

(1) The following individuals are not eligible to receive an award of reparations:

(a) persons who do not meet all of the provisions set forth in Section 63M-7-509;

(b) the offender;

(c) an accomplice of the offender;

(d) any person whose receipt of an award would unjustly benefit the offender, accomplice, or other person reasonably suspected of participating in the offense;

(e) the victim of a motor vehicle injury who was the owner or operator of the motor vehicle and was not at the time of the injury in compliance with the state motor vehicle insurance laws;

(f) any convicted offender serving a sentence of imprisonment in any prison or jail or residing in any other correctional facility;

(g) all persons who are on probation or parole if the circumstances surrounding the offense of which they are victims constitute a violation of their parole or probation; and

(h) any person whose injuries are the result of criminally injurious conduct which occurred in a prison, jail, or any other correctional facility while the person was serving a sentence of imprisonment.

(2) A person who knowingly submits a fraudulent claim for reparations or who knowingly misrepresents material facts in making a claim, and who receives an award based on

125 that claim, is guilty of an offense, based on the following award amounts:

126 (a) for value under [~~\$300~~] \$500, a class B misdemeanor;

127 (b) for value equal to or greater than [~~\$300~~] \$500, but less than [~~\$1,000~~] \$1,500, a class
128 A misdemeanor;

129 (c) for value equal to or greater than [~~\$1,000~~] \$1,500, but less than \$5,000, a third
130 degree felony; and

131 (d) for value equal to or greater than \$5,000, a second degree felony.

132 (3) A person who submits a claim described in Subsection (2) but receives no award
133 based on that claim is guilty of a class B misdemeanor.

134 (4) The state attorney general may prosecute violations under this section or may make
135 arrangements with county attorneys for the prosecution of violations under this section when
136 the attorney general cannot conveniently prosecute.

137 (5) The state may also bring a civil action against a claimant who receives reparation
138 payments that are later found to be unjustified and who does not return to the Crime Victim
139 Reparations Fund the unjustified amount.

140 Section 3. Section **76-3-203.1** is amended to read:

141 **76-3-203.1. Offenses committed in concert with two or more persons -- Notice --**
142 **Enhanced penalties.**

143 (1) As used in this section:

144 (a) "Criminal street gang" has the same definition as in Section 76-9-802.

145 (b) "In concert with two or more persons" means:

146 (i) the defendant was aided or encouraged by at least two other persons in committing
147 the offense and was aware of this aid or encouragement; and

148 (ii) each of the other persons:

149 (A) was physically present; or

150 (B) participated as a party to any offense listed in Subsection (5).

151 (c) "In concert with two or more persons" means, regarding intent:

152 (i) other persons participating as parties need not have the intent to engage in the same
153 offense or degree of offense as the defendant; and

154 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the
155 minor were an adult.

~~[(1)-(a)]~~ (2) A person who commits any offense listed in Subsection ~~[(4)]~~ (5) is subject to an enhanced penalty for the offense as provided in Subsection ~~[(3)]~~ (4) if the trier of fact finds beyond a reasonable doubt that the person acted:

(a) in concert with two or more persons~~[-];~~

~~[(b) "In concert with two or more persons" as used in this section means the defendant was aided or encouraged by at least two other persons in committing the offense and was aware that he was so aided or encouraged, and each of the other persons:]~~

~~[(i) was physically present; or]~~

~~[(ii) participated as a party to any offense listed in Subsection (4).:]~~

~~[(c) For purposes of Subsection (1)(b)(ii):]~~

~~[(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and]~~

~~[(ii) a minor is a party if the minor's actions would cause him to be a party if he were an adult.:]~~

(b) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(c) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802.

~~[(2)]~~ (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

~~[(3)]~~ (4) The enhanced penalty for a:

(a) class B misdemeanor is a class A misdemeanor;

(b) class A misdemeanor is a third degree felony;

(c) third degree felony is a second degree felony;

(d) second degree felony is a first degree felony; and

(e) first degree felony is an indeterminate prison term of not less than five years in addition to the statutory minimum prison term for the offense, and which may be for life.

~~[(4)]~~ (5) Offenses referred to in Subsection ~~[(1)]~~ (2) are:

(a) any criminal violation of ~~[Title 58, Chapter 37, 37a, 37b, or 37c, regarding drug-related offenses;]~~ the following chapters of Title 58:

187 (i) Chapter 37, Utah Controlled Substance Act;

188 (ii) Chapter 37a, Utah Drug Paraphernalia Act;

189 (iii) Chapter 37b, Imitation Controlled Substances Act; or

190 (iv) Chapter 37c, Utah Controlled Substance Precursor Act;

191 (b) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related
192 Offenses;

193 (c) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal
194 Homicide;

195 (d) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping,
196 Trafficking, and Smuggling;

197 (e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

198 (f) sexual exploitation of a minor as defined in Section 76-5a-3;

199 (g) any property destruction offense under Title 76, Chapter 6, Part 1, Property
200 Destruction;

201 (h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2,
202 Burglary and Criminal Trespass;

203 (i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery;

204 (j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail
205 Theft;

206 (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-504,
207 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514,
208 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

209 (l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,
210 except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

211 (m) tampering with a witness or other violation of Section 76-8-508;

212 (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;

213 (o) any explosives offense under Title 76, Chapter 10, Part 3, Explosives;

214 (p) any weapons offense under Title 76, Chapter 10, Part 5, Weapons;

215 (q) pornographic and harmful materials and performances offenses under Title 76,
216 Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;

217 (r) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;

- (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- (u) communications fraud as defined in Section 76-10-1801;
- (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and
- (w) burglary of a research facility as defined in Section 76-10-2002.

~~[(5)]~~ (6) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.

Section 4. Section **76-5-103** is amended to read:

76-5-103. Aggravated assault.

(1) A person commits aggravated assault if ~~[he]~~ the person commits assault as defined in Section 76-5-102 and ~~[he]~~ uses:

~~[(a) intentionally causes serious bodily injury to another; or]~~

~~[(b) under circumstances not amounting to a violation of Subsection (1)(a), uses]~~

(a) a dangerous weapon as defined in Section 76-1-601; or

(b) other means or force likely to produce death or serious bodily injury.

(2) (a) A violation of Subsection ~~[(1)(a)]~~ (1) is a ~~[second]~~ third degree felony, except under Subsection (2)(b).

~~[(3)]~~ (b) A violation of Subsection (1)~~[(b)]~~ that results in serious bodily injury is a ~~[third]~~ second degree felony.

Section 5. Section **76-6-101** is amended to read:

76-6-101. Definitions.

For purposes of this chapter:

(1) "Property" means any form of real property or tangible personal property which is capable of being damaged or destroyed and includes a habitable structure.

(2) "Habitable structure" means any building, vehicle, trailer, railway car, aircraft, or watercraft used for lodging or assembling persons or conducting business whether a person is actually present or not.

(3) "Property" is that of another, if anyone other than the actor has a possessory or

249 proprietary interest in any portion thereof.

250 (4) "Value" means:

251 (a) The market value of the property, if totally destroyed, at the time and place of the
252 offense, or where cost of replacement exceeds the market value; or

253 (b) Where the market value cannot be ascertained, the cost of repairing or replacing the
254 property within a reasonable time following the offense.

255 (5) If the property damaged has a value that cannot be ascertained by the criteria set
256 forth in Subsections (4)(a) and (b), the property shall be considered to have a value less than
257 ~~[\$300]~~ \$500.

258 (6) "Fire" means a flame, heat source capable of combustion, or material capable of
259 combustion that is caused, set, or maintained by a person for any purpose.

260 Section 6. Section **76-6-102** is amended to read:

261 **76-6-102. Arson.**

262 (1) A person is guilty of arson if, under circumstances not amounting to aggravated
263 arson, ~~[by means of fire or explosives,]~~ the person by means of fire or explosives unlawfully
264 and intentionally damages:

265 (a) any property with intention of defrauding an insurer; or

266 (b) the property of another.

267 (2) A violation of Subsection (1)(a) is a second degree felony.

268 (3) A violation of Subsection (1)(b) is:

269 (a) a second degree felony if:

270 (i) the damage caused is or exceeds \$5,000 in value; or

271 (ii) as a proximate result of the fire or explosion, any person not a participant in the
272 offense suffers serious bodily injury as defined in Section 76-1-601;

273 (b) a third degree felony if:

274 (i) the damage caused is or exceeds ~~[\$1,000]~~ \$1,500 but is less than \$5,000 in value;

275 (ii) as a proximate result of the fire or explosion, any person not a participant in the
276 offense suffers substantial bodily injury as defined in Section 76-1-601; or

277 (iii) the fire or explosion endangers human life;

278 (c) a class A misdemeanor if the damage caused is or exceeds ~~[\$300]~~ \$500 but is less
279 than ~~[\$1,000]~~ \$1,500 in value; and

(d) a class B misdemeanor if the damage caused is less than [~~\$300~~] \$500.

Section 7. Section **76-6-104** is amended to read:

76-6-104. Reckless burning.

(1) A person is guilty of reckless burning if the person:

(a) recklessly starts a fire or causes an explosion which endangers human life;

(b) having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm;

(c) builds or maintains a fire without taking reasonable steps to remove all flammable materials surrounding the site of the fire as necessary to prevent the fire's spread or escape; or

(d) damages the property of another by reckless use of fire or causing an explosion.

(2) (a) A violation of Subsection (1)(a) or (b) is a class A misdemeanor.

(b) A violation of Subsection (1)(c) is a class B misdemeanor.

(c) A violation of Subsection (1)(d) is:

(i) a class A misdemeanor if damage to property is or exceeds [~~\$1,000~~] \$1,500 in value;

(ii) a class B misdemeanor if the damage to property is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500 in value; and

(iii) a class C misdemeanor if the damage to property is or exceeds \$150 but is less than [~~\$300~~] \$500 in value.

(d) Any other violation under Subsection (1)(d) is an infraction.

Section 8. Section **76-6-106** is amended to read:

76-6-106. Criminal mischief.

(1) As used in this section, "critical infrastructure" includes:

(a) information and communication systems;

(b) financial and banking systems;

(c) transportation systems;

(d) any public utility service, including the power, energy, and water supply systems;

(e) sewage and water treatment systems;

(f) health care facilities as listed in Section 26-21-2, and emergency fire, medical, and law enforcement response systems;

311 (g) public health facilities and systems;
312 (h) food distribution systems; and
313 (i) other government operations and services.

314 (2) A person commits criminal mischief if the person:

315 (a) under circumstances not amounting to arson, damages or destroys property with the
316 intention of defrauding an insurer;

317 (b) intentionally and unlawfully tampers with the property of another and as a result:

318 (i) recklessly endangers:

319 (A) human life; or
320 (B) human health or safety; or

321 (ii) recklessly causes or threatens a substantial interruption or impairment of any
322 critical infrastructure;

323 (c) intentionally damages, defaces, or destroys the property of another; or
324 (d) recklessly or willfully shoots or propels a missile or other object at or against a
325 motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving
326 or standing.

327 (3) (a) (i) A violation of Subsection (2)(a) is a third degree felony.
328 (ii) A violation of Subsection (2)(b)(i)(A) is a class A misdemeanor.
329 (iii) A violation of Subsection (2)(b)(i)(B) is a class B misdemeanor.
330 (iv) A violation of Subsection (2)(b)(ii) is a second degree felony.

331 (b) Any other violation of this section is a:

332 (i) second degree felony if the actor's conduct causes or is intended to cause pecuniary
333 loss equal to or in excess of \$5,000 in value;

334 (ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary
335 loss equal to or in excess of [~~\$1,000~~] \$1,500 but is less than \$5,000 in value;

336 (iii) class A misdemeanor if the actor's conduct causes or is intended to cause
337 pecuniary loss equal to or in excess of [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500 in value;
338 and

339 (iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary
340 loss less than [~~\$300~~] \$500 in value.

341 (4) In determining the value of damages under this section, or for computer crimes

under Section 76-6-703, the value of any item, computer, computer network, computer property, computer services, software, or data includes the measurable value of the loss of use of the items and the measurable cost to replace or restore the items.

(5) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses incurred in responding to a violation of Subsection (2)(b)(ii), unless the court states on the record the reasons why the reimbursement would be inappropriate.

Section 9. Section **76-6-111** is amended to read:

76-6-111. Wanton destruction of livestock -- Penalties -- Seizure and disposition of property.

(1) As used in this section:

(a) "Law enforcement officer" is as defined in Section 53-13-103.

(b) "Livestock" means a domestic animal or fur bearer raised or kept for profit, including:

(i) cattle;

(ii) sheep;

(iii) goats;

(iv) swine;

(v) horses;

(vi) mules;

(vii) poultry; and

(viii) domesticated elk as defined in Section 4-39-102.

(2) Unless authorized by Section 4-25-4, 4-25-5, 4-25-14, 4-39-401, or 18-1-3, a person is guilty of wanton destruction of livestock if that person:

(a) injures, physically alters, releases, or causes the death of livestock; and

(b) does so:

(i) intentionally or knowingly; and

(ii) without the permission of the owner of the livestock.

(3) Wanton destruction of livestock is punishable as a:

(a) class B misdemeanor if the aggregate value of the livestock is [~~\$300~~] \$500 or less;

(b) class A misdemeanor if the aggregate value of the livestock is more than [~~\$300~~]
\$500, but does not exceed [~~\$1,000~~] \$1,500;

(c) third degree felony if the aggregate value of the livestock is more than [~~\$1,000~~]
\$1,500, but does not exceed \$5,000; and

(d) second degree felony if the aggregate value of the livestock is more than \$5,000.

(4) A material, device, or vehicle used in violation of Subsection (2) is subject to
forfeiture under the procedures and substantive protections established in Title 24, Chapter 1,
Utah Uniform Forfeiture Procedures Act.

(5) A peace officer may seize a material, device, or vehicle used in violation of
Subsection (2):

(a) upon notice and service of process issued by a court having jurisdiction over the
property; or

(b) without notice and service of process if:

(i) the seizure is incident to an arrest under:

(A) a search warrant; or

(B) an inspection under an administrative inspection warrant;

(ii) the material, device, or vehicle has been the subject of a prior judgment in favor of
the state in a criminal injunction or forfeiture proceeding under this section; or

(iii) the peace officer has probable cause to believe that the property has been used in
violation of Subsection (2).

(6) (a) A material, device, or vehicle seized under this section is not repleviable but is
in custody of the law enforcement agency making the seizure, subject only to the orders and
decrees of a court or official having jurisdiction.

(b) A peace officer who seizes a material, device, or vehicle under this section may:

(i) place the property under seal;

(ii) remove the property to a place designated by the warrant under which it was seized;

or

(iii) take custody of the property and remove it to an appropriate location for
disposition in accordance with law.

Section 10. Section **76-6-409.3** is amended to read:

76-6-409.3. Theft of utility or cable television services -- Restitution -- Civil action

for damages.

(1) As used in this section:

(a) "Cable television service" means any audio, video, or data service provided by a cable television company over its cable system facilities for payment, but does not include the use of a satellite dish or antenna.

(b) "Owner" includes any part-owner, joint owner, tenant in common, joint tenant, or tenant by the entirety of the whole or a part of any building and the property on which it is located.

(c) "Person" means any individual, firm, partnership, corporation, company, association, or other legal entity.

(d) "Tenant or occupant" includes any person, including the owner, who occupies the whole or part of any building, whether alone or with others.

(e) "Utility" means any public utility, municipally-owned utility, or cooperative utility which provides electricity, gas, water, or sewer, or any combination of them, for sale to consumers.

(2) A person is guilty of theft of a utility or cable television service if the person commits any prohibited acts which make gas, electricity, water, sewer, or cable television available to a tenant or occupant, including himself, with intent to avoid due payment to the utility or cable television company. Any person aiding and abetting in these prohibited acts is a party to the offense under Section 76-2-202. Prohibited acts include:

(a) connecting any tube, pipe, wire, cable, or other instrument with any meter, device, or other instrument used for conducting gas, electricity, water, sewer, or cable television in a manner as permits the use of the gas, electricity, water, sewer, or cable television without its passing through a meter or other instrument recording the usage for billing;

(b) altering, injuring, or preventing the normal action of a meter, valve, stopcock, or other instrument used for measuring quantities of gas, electricity, water, or sewer service, or making or maintaining any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by the company which the person is not authorized by the company to receive;

(c) reconnecting gas, electricity, water, sewer, or cable television connections or

otherwise restoring service when one or more of those utilities or cable service have been lawfully disconnected or turned off by the provider of the utility or cable service;

(d) intentionally breaking, defacing, or causing to be broken or defaced any seal, locking device, or other part of a metering device for recording usage of gas, electricity, water, or sewer service, or a security system for the recording device, or a cable television control device;

(e) removing a metering device designed to measure quantities of gas, electricity, water, or sewer service;

(f) transferring from one location to another a metering device for measuring quantities of public utility services of gas, electricity, water, or sewer service;

(g) changing the indicated consumption, jamming the measuring device, bypassing the meter or measuring device with a jumper so that it does not indicate use or registers use incorrectly, or otherwise obtaining quantities of gas, electricity, water, or sewer service from the utility without their passing through a metering device for measuring quantities of consumption for billing purposes;

(h) using a metering device belonging to the utility that has not been assigned to the location and installed by the utility;

(i) fabricating or using a device to pick or otherwise tamper with the locks used to deter utility service diversion, meter tampering, meter thefts, and unauthorized cable television service;

(j) assisting or instructing any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing the service;

(k) making or maintaining a connection or connections, whether physical, electrical, mechanical, acoustical, or by other means, with any cables, wires, components, or other devices used for the distribution of cable television services without authority from the cable television company; or

(l) possessing without authority any device or printed circuit board designed in whole or in part to receive any cable television programming or services offered for sale over a cable television system with the intent that the device or printed circuit be used for the reception of the cable television company's services without payment. For purposes of this subsection,

device or printed circuit board does not include the use of a satellite dish or antenna.

(3) The presence on property in the possession of a person of any device or alteration which permits the diversion or use of utility or cable service to avoid the registration of the use by or on a meter installed by the utility or to otherwise avoid the recording of use of the service for payment or otherwise avoid payment gives rise to an inference that the person in possession of the property installed the device or caused the alteration if:

(a) the presence of the device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility or cable television service; and

(b) the person charged has received the direct benefit of the reduction of the cost of the utility or cable television service.

(4) A person who violates this section is guilty of the offense of theft of utility or cable television service.

(a) In the case of theft of utility services, if the value of the gas, electricity, water, or sewer service:

(i) is less than [~~\$300~~] \$500, the offense is a class B misdemeanor;

(ii) is or exceeds [~~\$300~~] \$500 but is not more than [~~\$1,000~~] \$1,500, the offense is a class A misdemeanor;

(iii) is or exceeds [~~\$1,000~~] \$1,500 but is not more than \$5,000, the offense is a third degree felony; and

(iv) is or exceeds \$5,000 or if the offender has previously been convicted of a violation of this section, the offense is a second degree felony.

(b) In the case of theft of cable television services, the penalties are prescribed in Section 76-6-412.

(5) A person who violates this section shall make restitution to the utility or cable television company for the value of the gas, electricity, water, sewer, or cable television service consumed in violation of this section plus all reasonable expenses and costs incurred on account of the violation of this section. Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employee time, and equipment use.

(6) Criminal prosecution under this section does not affect the right of a utility or cable television company to bring a civil action for redress for damages suffered as a result of the

commission of any of the acts prohibited by this section.

(7) This section does not abridge or alter any other right, action, or remedy otherwise available to a utility or cable television company.

Section 11. Section **76-6-412** is amended to read:

76-6-412. Theft -- Classification of offenses -- Action for treble damages.

(1) Theft of property and services as provided in this chapter ~~[shall be]~~ is punishable:

(a) as a second degree felony ~~[of the second degree]~~ if the:

(i) value of the property or services is or exceeds \$5,000;

(ii) property stolen is a firearm or an operable motor vehicle;

(iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the time of the theft; or

(iv) property is stolen from the person of another;

(b) as a third degree felony ~~[of the third degree]~~ if:

(i) the value of the property or services is or exceeds ~~[\$1,000]~~ \$1,500 but is less than \$5,000;

(ii) the actor has been twice before convicted of any of the offenses listed in this Subsection (1)(b)(ii), if each prior offense was committed within ten years of the date of the current conviction or the date of the offense upon which the current conviction is based:

(A) theft, any robbery, or any burglary with intent to commit theft; [or]

(B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B).

(iii) in a case not amounting to a second-degree felony, the property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes;

(c) as a class A misdemeanor if the value of the property stolen is or exceeds ~~[\$300]~~ \$500 but is less than ~~[\$1,000]~~ \$1,500; or

(d) as a class B misdemeanor if the value of the property stolen is less than ~~[\$300]~~ \$500.

(2) Any person who violates Subsection 76-6-408(1) or Section 76-6-413, or commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable

528 attorneys' fees.

529 Section 12. Section **76-6-505** is amended to read:

530 **76-6-505. Issuing a bad check or draft -- Presumption.**

531 (1) (a) Any person who issues or passes a check or draft for the payment of money, for
532 the purpose of obtaining from any person, firm, partnership, or corporation, any money,
533 property, or other thing of value or paying for any services, wages, salary, labor, or rent,
534 knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of
535 issuing a bad check or draft.

536 (b) For purposes of this Subsection (1), a person who issues a check or draft for which
537 payment is refused by the drawee is presumed to know the check or draft would not be paid if
538 he had no account with the drawee at the time of issue.

539 (2) Any person who issues or passes a check or draft for the payment of money, for the
540 purpose of obtaining from any person, firm, partnership, or corporation, any money, property,
541 or other thing of value or paying for any services, wages, salary, labor, or rent, payment of
542 which check or draft is legally refused by the drawee, is guilty of issuing a bad check or draft if
543 he fails to make good and actual payment to the payee in the amount of the refused check or
544 draft within 14 days of his receiving actual notice of the check or draft's nonpayment.

545 (3) An offense of issuing a bad check or draft shall be punished as follows:

546 (a) If the check or draft or series of checks or drafts made or drawn in this state within
547 a period not exceeding six months amounts to a sum that is less than [~~\$300~~] \$500, the offense
548 is a class B misdemeanor.

549 (b) If the check or draft or checks or drafts made or drawn in this state within a period
550 not exceeding six months amounts to a sum that is or exceeds [~~\$300~~] \$500 but is less than
551 [~~\$1,000~~] \$1,500, the offense is a class A misdemeanor.

552 (c) If the check or draft or checks or drafts made or drawn in this state within a period
553 not exceeding six months amounts to a sum that is or exceeds [~~\$1,000~~] \$1,500 but is less than
554 \$5,000, the offense is a felony of the third degree.

555 (d) If the check or draft or checks or drafts made or drawn in this state within a period
556 not exceeding six months amounts to a sum that is or exceeds \$5,000, the offense is a second
557 degree felony.

558 Section 13. Section **76-6-506.5** is amended to read:

76-6-506.5. Financial transaction card offenses -- Classification -- Multiple violations.

(1) Any person found guilty of unlawful conduct described in Section 76-6-506.2 or 76-6-506.6 is guilty of:

(a) a class B misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is less than [~~\$300~~] \$500;

(b) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500;

(c) a third degree felony when the value of the property, money, or thing obtained or attempted to be obtained is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000; and

(d) a second degree felony when the value of the property, money, or thing obtained or attempted to be obtained is or exceeds \$5,000.

(2) Multiple violations of Subsection 76-6-506.2(1), Section 76-6-506.6, and this section may be aggregated into a single offense, and the degree of the offense is determined by the total value of all property, money, or things obtained or attempted to be obtained through the multiple violations.

(3) The court shall make appropriate findings in any prosecution under this section that the card holder did not commit the crime.

Section 14. Section **76-6-513** is amended to read:

76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.

(1) As used in this section:

(a) "Fiduciary" is as defined in Section 22-1-1.

(b) "Financial institution" means "depository institution" and "trust company" as defined in Section 7-1-103.

(c) "Governmental entity" is as defined in Section 63G-7-102.

(d) "Person" does not include a financial institution whose fiduciary functions are supervised by the Department of Financial Institutions or a federal regulatory agency.

(e) "Property" is as defined in Section 76-6-401.

(f) "Public monies" is as defined in Section 76-8-401.

(2) A person is guilty of unlawfully dealing with property by a fiduciary if the person deals with property that has been entrusted to him as a fiduciary, or property of a governmental

entity, public monies, or of a financial institution, in a manner which the person knows is a violation of the person's duty and which involves substantial risk of loss or detriment to the owner or to a person for whose benefit the property was entrusted. A violation of this Subsection (2) is punishable under Section 76-6-412.

(3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if, without permission of the owner of the property or some other person with authority to give permission, the person pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.

(b) An offense under Subsection (3)(a) is punishable as:

(i) a felony of the second degree if the value of the property wrongfully pledged is or exceeds \$5,000;

(ii) a felony of the third degree if the value of the property wrongfully pledged is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000;

(iii) a class A misdemeanor if the value of the property is or exceeds [~~\$300~~] \$500, but is less than [~~\$1,000~~] \$1,500 or the actor has been twice before convicted of theft, robbery, burglary with intent to commit theft, or unlawful dealing with property by a fiduciary; or

(iv) a class B misdemeanor if the value of the property is less than [~~\$300~~] \$500.

Section 15. Section **76-6-518** is amended to read:

76-6-518. Criminal simulation.

(1) A person is guilty of criminal simulation if, with intent to defraud another:

(a) he makes or alters an object in whole or in part so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(b) he sells, passes, or otherwise utters an object so made or altered;

(c) he possesses an object so made or altered with intent to sell, pass, or otherwise utter it; or

(d) he authenticates or certifies an object so made or altered as genuine or as different from what it is.

(2) Criminal simulation is punishable as follows:

(a) If the value defrauded or intended to be defrauded is less than [~~\$300~~] \$500, the offense is a class B misdemeanor.

(b) If the value defrauded or intended to be defrauded is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500, the offense is a class A misdemeanor.

(c) If the value defrauded or intended to be defrauded is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000, the offense is a felony of the third degree.

(d) If the value defrauded or intended to be defrauded is or exceeds \$5,000, the offense is a felony of the second degree.

Section 16. Section **76-6-608** is amended to read:

76-6-608. Theft detection shielding devices prohibited -- Penalties.

(1) A person may not knowingly:

(a) make or possess any container or device used for, intended for use for, or represented as having the purpose of shielding merchandise from any electronic or magnetic theft alarm sensor, with the intent to commit a theft of merchandise;

(b) sell, offer to sell, advertise, give, transport, or otherwise transfer to another any container or device intended for use for or represented as having the purpose of shielding merchandise from any electronic or magnetic theft alarm sensor;

(c) possess any tool or instrument designed to remove any theft detection device from any merchandise, with the intent to use the tool or instrument to remove any theft detection device from any merchandise without the permission of the merchant or the person owning or in possession of the merchandise; or

(d) intentionally remove a theft detection device from merchandise prior to purchase and without the permission of the merchant.

(2) (a) A violation of Subsection (1)(a), (b), or (c) is a class A misdemeanor.

(b) A violation of Subsection (1)(d) is a:

(i) class B misdemeanor if the value of the merchandise from which the theft detection device is removed is less than [~~\$300~~] \$500; or

(ii) class A misdemeanor if the value of the merchandise from which the theft detection device is removed is or exceeds [~~\$300~~] \$500.

(3) A violation of Subsection (1) is a separate offense from any offense listed in Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail Theft.

(4) Criminal prosecutions under this section do not affect any person's right of civil action for redress for damages suffered as a result of any violation of this section.

Section 17. Section **76-6-703** is amended to read:

76-6-703. Computer crimes and penalties.

(1) A person who without authorization gains or attempts to gain access to and alters, damages, destroys, discloses, or modifies any computer, computer network, computer property, computer system, computer program, computer data or software, and thereby causes damage to another, or obtains money, property, information, or a benefit for any person without legal right, is guilty of:

(a) a class B misdemeanor when:

(i) the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is less than [~~\$300~~] \$500; or

(ii) the information obtained is not confidential;

(b) a class A misdemeanor when the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500;

(c) a third degree felony when the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000;

(d) a second degree felony when the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds \$5,000; or

(e) a third degree felony when:

(i) the property or benefit obtained or sought to be obtained is a license or entitlement;

(ii) the damage is to the license or entitlement of another person; or

(iii) the information obtained is confidential; or

(iv) in gaining access the person breaches or breaks through a security system.

(2) (a) Except as provided in Subsection (2)(b), a person who intentionally or knowingly and without authorization gains or attempts to gain access to a computer, computer network, computer property, or computer system under circumstances not otherwise constituting an offense under this section is guilty of a class B misdemeanor.

(b) Notwithstanding Subsection (2)(a), a retailer that uses an electronic product identification or tracking system, or other technology to identify, track, or price goods is not guilty of a violation of Subsection (2)(a) if the equipment designed to read the electronic

product identification or tracking system data and used by the retailer to identify, track, or price goods is located within the retailer's location.

(3) A person who uses or knowingly allows another person to use any computer, computer network, computer property, or computer system, program, or software to devise or execute any artifice or scheme to defraud or to obtain money, property, services, or other things of value by false pretenses, promises, or representations, is guilty of an offense based on the value of the money, property, services, or things of value, in the degree set forth in Subsection 76-10-1801(1).

(4) A person who intentionally or knowingly and without authorization, interferes with or interrupts computer services to another authorized to receive the services is guilty of a class A misdemeanor.

(5) It is an affirmative defense to Subsections (1) and (2) that a person obtained access or attempted to obtain access in response to, and for the purpose of protecting against or investigating, a prior attempted or successful breach of security of a computer, computer network, computer property, computer system whose security the person is authorized or entitled to protect, and the access attempted or obtained was no greater than reasonably necessary for that purpose.

Section 18. Section **76-6-1204** is amended to read:

76-6-1204. Classification of offense.

(1) Notwithstanding any other administrative, civil, or criminal penalties, a person who violates Section 76-6-1203 is guilty of a:

(a) class A misdemeanor when the value is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500;

(b) third degree felony when the value is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000;

(c) second degree felony when the value is or exceeds \$5,000; and

(d) second degree felony when the object or purpose of the commission of an act of mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the value.

(2) The determination of the degree of any offense under Subsection (1) is measured by the total value of all property, money, or things obtained or sought to be obtained by a violation

of Section 76-6-1203, except as provided in Subsection (1)(d).

(3) Each residential or commercial property transaction offense under this part constitutes a separate violation.

Section 19. Section **76-8-1206** is amended to read:

76-8-1206. Penalties for public assistance fraud.

(1) The severity of the offense of public assistance fraud is classified in accordance with the value of payments, assistance, or other benefits received, misappropriated, claimed, or applied for as follows:

(a) second degree felony if the value is or exceeds \$5,000;

(b) third degree felony if the value is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000;

(c) class A misdemeanor if the value is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500; and

(d) class B misdemeanor if the value is less than [~~\$300~~] \$500.

(2) For purposes of Subsection (1), the value of an offense is calculated by aggregating the values of each instance of public assistance fraud committed by the defendant as part of the same facts and circumstances or a related series of facts and circumstances.

(3) Incidents of trafficking in food stamps that occur within a six-month period, committed by an individual or coconspirators, are deemed to be a related series of facts and circumstances regardless of whether the transactions are conducted with a variety of unrelated parties.

Section 20. Section **76-8-1301** is amended to read:

76-8-1301. False statements regarding unemployment compensation -- Penalties.

(1) (a) A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase a benefit or other payment under Title 35A, Chapter 4, Employment Security Act, or under the Unemployment Compensation Law of any state or of the federal government for any person is guilty of unemployment insurance fraud.

(b) A violation of Subsection (1)(a) is:

(i) a class B misdemeanor when the value of the money obtained or sought to be obtained is less than [~~\$300~~] \$500;

(ii) a class A misdemeanor when the value of the money obtained or sought to be obtained is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500;

(iii) a third degree felony when the value of the money obtained or sought to be obtained is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000; or

(iv) a second degree felony when the value of the money obtained or sought to be obtained is or exceeds \$5,000.

(c) The determination of the degree of an offense under Subsection (1)(b) shall be measured by the total value of all money obtained or sought to be obtained by the unlawful conduct.

(2) (a) An officer or agent of an employing unit as defined in Section 35A-4-202 or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of unemployment compensation benefits to an individual entitled to those benefits, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under Title 35A, Chapter 4, Employment Security Act, or under the Unemployment Compensation Law of any state or of the federal government, or who willfully fails or refuses to make a contribution or other payment or to furnish any report required in Title 35A, Chapter 4, Employment Security Act, or to produce or permit the inspection or copying of records as required under that chapter is guilty of unemployment insurance fraud.

(b) A violation of Subsection (2)(a) is:

(i) a class B misdemeanor when the value of the money obtained or sought to be obtained is less than [~~\$300~~] \$500;

(ii) a class A misdemeanor when the value of the money obtained or sought to be obtained is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500;

(iii) a third degree felony when the value of the money obtained or sought to be obtained is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000; or

(iv) a second degree felony when the value of the money obtained or sought to be obtained is or exceeds \$5,000.

(3) (a) A person who willfully violates any provision of Title 35A, Chapter 4, Employment Security Act, or any order made under that chapter, the violation of which is made unlawful or the observance of which is required under the terms of that chapter, and for which

a penalty is neither prescribed in that chapter nor provided by any other applicable statute is guilty of a class A misdemeanor.

(b) Each day a violation of Subsection (3)(a) continues shall be a separate offense.

(4) A person is guilty of a class C misdemeanor if:

(a) as an employee of the Department of Workforce Services, in willful violation of Section 35A-4-312, the employee makes a disclosure of information obtained from an employing unit or individual in the administration of Title 35A, Chapter 4, Employment Security Act; or

(b) the person has obtained a list of applicants for work or of claimants or recipients of benefits under Title 35A, Chapter 4, Employment Security Act, and uses or permits the use of the list for any political purpose.

Section 21. Section **76-10-1801** is amended to read:

76-10-1801. Communications fraud -- Elements -- Penalties.

(1) Any person who has devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and who communicates directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice is guilty of:

(a) a class B misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is less than ~~[\$300]~~ \$500;

(b) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is or exceeds ~~[\$300]~~ \$500 but is less than ~~[\$1,000]~~ \$1,500;

(c) a third degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds ~~[\$1,000]~~ \$1,500 but is less than \$5,000;

(d) a second degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$5,000; and

(e) a second degree felony when the object or purpose of the scheme or artifice to defraud is the obtaining of sensitive personal identifying information, regardless of the value.

(2) The determination of the degree of any offense under Subsection (1) shall be measured by the total value of all property, money, or things obtained or sought to be obtained by the scheme or artifice described in Subsection (1) except as provided in Subsection (1)(e).

(3) Reliance on the part of any person is not a necessary element of the offense described in Subsection (1).

(4) An intent on the part of the perpetrator of any offense described in Subsection (1) to permanently deprive any person of property, money, or thing of value is not a necessary element of the offense.

(5) Each separate communication made for the purpose of executing or concealing a scheme or artifice described in Subsection (1) is a separate act and offense of communication fraud.

(6) (a) To communicate as described in Subsection (1) means to:

(i) bestow, convey, make known, recount, or impart;

(ii) give by way of information;

(iii) talk over; or

(iv) transmit information.

(b) Means of communication include use of the mail, telephone, telegraph, radio, television, newspaper, computer, and spoken and written communication.

(7) A person may not be convicted under this section unless the pretenses, representations, promises, or material omissions made or omitted were made or omitted intentionally, knowingly, or with a reckless disregard for the truth.

(8) As used in this section, "sensitive personal identifying information" means information regarding an individual's:

(a) Social Security number;

(b) driver's license number or other government issued identification number;

(c) financial account number or credit or debit card number;

(d) password or personal identification number or other identification required to gain access to a financial account or a secure website;

(e) automated or electronic signature;

(f) unique biometric data; or

(g) any other information that can be used to gain access to an individual's financial accounts or to obtain goods or services.

Section 22. Section **78A-6-703** is amended to read:

78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --

Factors considered by juvenile court for waiver of jurisdiction to district court.

(1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor were adult and the offense was committed:

(i) in concert with two or more persons [~~under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult~~];

(ii) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(iii) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of ~~[his]~~ the minor's home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

869 (g) the likelihood of rehabilitation of the minor by use of facilities available to the
870 juvenile court;

871 (h) the desirability of trial and disposition of the entire offense in one court when the
872 minor's associates in the alleged offense are adults who will be charged with a crime in the
873 district court;

874 (i) whether the minor used a firearm in the commission of an offense; and

875 (j) whether the minor possessed a dangerous weapon on or about school premises as
876 provided in Section 76-10-505.5.

877 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is
878 discretionary with the court.

879 (5) (a) Written reports and other materials relating to the minor's mental, physical,
880 educational, and social history may be considered by the court.

881 (b) If requested by the minor, the minor's parent, guardian, or other interested party, the
882 court shall require the person or agency preparing the report and other material to appear and
883 be subject to both direct and cross-examination.

884 (6) At the conclusion of the state's case, the minor may testify under oath, call
885 witnesses, cross-examine adverse witnesses, and present evidence on the factors required by
886 Subsection (3).

887 (7) If the court finds the state has met its burden under Subsection (2), the court may
888 enter an order:

889 (a) certifying that finding; and

890 (b) directing that the minor be held for criminal proceedings in the district court.

891 (8) If an indictment is returned by a grand jury, the preliminary examination held by the
892 juvenile court need not include a finding of probable cause, but the juvenile court shall proceed
893 in accordance with this section regarding the additional consideration referred to in Subsection
894 (2)(b).

895 (9) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions
896 relating to proceedings in juvenile cases are applicable to the hearing held under this section to
897 the extent they are pertinent.

898 (10) A minor who has been directed to be held for criminal proceedings in the district
899 court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the minor with an offense described in Section 78A-6-702, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against ~~him~~ the minor, except as provided in Subsection (14).

(13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(14) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Section 23. Section **78B-6-1101** is amended to read:

78B-6-1101. Definitions -- Nuisance -- Right of action -- Judgment.

(1) A nuisance is anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance may be the subject of an action.

(2) A nuisance may include the following:

(a) drug houses and drug dealing as provided in Section 78B-6-1107;

(b) gambling as provided in Title 76, Chapter 10, Part 11;

(c) criminal activity committed in concert with two or more persons as provided in Section 76-3-203.1;

(d) criminal activity committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;

(e) criminal activity committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

931 ~~[(d)]~~ (f) party houses which frequently create conditions defined in Subsection (1); and
932 ~~[(e)]~~ (g) prostitution as provided in Title 76, Chapter 10, Part 13.

933 (3) A nuisance under this part includes tobacco smoke that drifts into any residential
934 unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:

935 (a) drifts in more than once in each of two or more consecutive seven-day periods; and

936 (b) creates any of the conditions under Subsection (1).

937 (4) Subsection (3) does not apply to:

938 (a) residential rental units available for temporary rental, such as for vacations, or
939 available for only 30 or fewer days at a time; or

940 (b) hotel or motel rooms.

941 (5) Subsection (3) does not apply to any unit that is part of a timeshare development, as
942 defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.

943 (6) An action may be brought by any person whose property is injuriously affected, or
944 whose personal enjoyment is lessened by the nuisance.

945 (7) "Agricultural operation" means any activity engaged in the commercial production
946 of crops, orchards, aquaculture, livestock, poultry, livestock products, poultry products, and the
947 facilities, equipment, and property used to facilitate the activity.

948 (8) "Manufacturing facility" means any factory, plant, or other facility including its
949 appurtenances, where the form of raw materials, processed materials, commodities, or other
950 physical objects is converted or otherwise changed into other materials, commodities, or
951 physical objects or where such materials, commodities, or physical objects are combined to
952 form a new material, commodity, or physical object.

953 Section 24. Section **78B-6-1107** is amended to read:

954 **78B-6-1107. Nuisance -- Right of action to abate nuisances -- Drug houses and**
955 **drug dealing -- Gambling -- Criminal activity -- Prostitution -- Weapons.**

956 (1) Every building or place is a nuisance where:

957 (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, or
958 acquisition occurs of any controlled substance, precursor, or analog specified in Title 58,
959 Chapter 37, Controlled Substances;

960 (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title
961 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in

962 Subsection 78B-6-1101(1);

963 (c) criminal activity is committed in concert with two or more persons as provided in

964 Section 76-3-203.1;

965 (d) criminal activity committed for the benefit of, at the direction of, or in association

966 with any criminal street gang as defined in Section 76-9-802;

967 (e) criminal activity committed to gain recognition, acceptance, membership, or

968 increased status with a criminal street gang as defined in Section 76-9-802;

969 ~~[(d)]~~ (f) parties occur frequently which create the conditions of a nuisance as defined in

970 Subsection 78B-6-1101(1);

971 ~~[(e)]~~ (g) prostitution or promotion of prostitution is regularly carried on by one or more

972 persons as provided in Title 76, Chapter 10, Part 13, Prostitution; and

973 (f) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises.

974 (2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that

975 the defendant is lawfully entitled to possession of a controlled substance.

976 (3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of

977 the nuisance as defined in Subsection (1).

Legislative Review Note

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Office of Legislative Research and General Counsel